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COLUMBIA | GREENVILLE

August 26, 2005

VIA EMAIL & HAND DELIVERY

Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Synergy Business Park, Saluda Building
101 Executive Center Drive
Columbia, SC 29210

Re: Acceris- Management & Acquisition, LLC
Docket No. 2005-189-C
Our File No. 30053-0001

Dear Mr. Terreni:

Enclosed for filing please find the Testimony of Drew S. Backstrand on behalf of Acceris Management And Acquisition, LLC. The company does not intend to use telemarketing in South Carolina; therefore, no sample scripts are included. Please date-stamp the extra copies of the testimony as proof of filing and return them with our courier.

If you have any questions, please have someone on your staff contact me.

Very truly yours,

ROBINSON, MCFADDEN & MOORE, P.C.

Bonnie D. Shealy

/bds
Enclosures

cc/enc: Patrick D. Crocker, Esquire (via email)
Drew S. Backstrand, General Counsel (via email & U.S. Mail)
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BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NO. 2005-189-C

In re: Application of)
Acceris Management and Acquisition LLC)
For a Certificate of Public Convenience)
And Necessity to Provide Interexchange)
Telecommunications Services, for)
Alternative Regulation, and for Authority)
To Acquire Certain Assets of)
Acceris Communications Corp.)

TESTIMONY OF DREW S. BACKSTRAND

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PUBLIC SERVICE COMMISSION

1 **I. INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Drew S. Backstrand. My business office address is 60 South Sixth Street,
4 Suite 2535, Minneapolis, MN 55402.

5 **Q. By whom are you employed and in what capacity?**

6 A. I am the General Counsel for Acceris Management and Acquisition LLC ("Acceris") and
7 North Central Equity LLC, parent of Acceris. My responsibilities include corporate
8 governance and compliance, negotiating investment terms and financial structures,
9 negotiating transactions, assisting due diligence preparation and requests and regulatory
10 matters for North Central and Acceris.

11 **Q. Please give a brief description of your background and experience in business**
12 **and telecommunications.**

13 A. I was the General Counsel of NewTel Holdings LLC from 2002-2004. NewTel Holdings
14 LLC was a US, European and Australian based reseller of telecommunications services.
15 It owned a CLEC named New Access Communications LLC, which provided resale of
16 local and long distance services in 26 states and long distance only services in an
17 additional 20 other states. The European operations were in Ireland, Spain and
18 Switzerland and the final operation was in Australia. I was Vice President, Credit,
19 Internet Financial Services LLC, 1999-2002. Prior thereto I was General Counsel (1993-
20 2005), Assistant Vice President, Legal (1990-1993) and Assistance Vice President,
21 Legal (1986-1990) of Green Tree Financial Corporation, a nationwide public consumer
22 finance company. I received a BS degree from Carleton College in Minnesota in
23 Political Science (1979, magna cum laude), and a Juris Doctorate from the University of
24 Minnesota Law School (1983, cum laude).

25 **Q. What is the purpose of your testimony?**

1 A. The purpose of my testimony is to describe the nature of Acceris' proposed service
2 offerings within the State of South Carolina, and to demonstrate its financial, managerial,
3 and technical ability to provide the telecommunications services for which authority is
4 sought herein. The purpose of my testimony is also to describe the proposed
5 transaction whereby Acceris will purchase certain assets, including the customer base,
6 of Acceris Communications Corp. ("ACC").

7 **Q. Do you intend to incorporate by reference any documents into your testimony?**

8 A. Yes. I wish to incorporate by reference the underlying Application filed in this proceeding
9 and its associated exhibits.

10
11 **II. THE BUSINESS OF ACCERIS**

12 **Q. Has Acceris registered to do business in South Carolina?**

13 A. Yes. Acceris is a limited liability company organized in the State of Minnesota and has
14 been authorized to transact business within the State of South Carolina. Copies of the
15 qualifying documents are attached to the Application as Exhibits A and B.

16 **Q. Please describe the services Acceris intends to provide within the State of South**
17 **Carolina.**

18 A. Acceris seeks authority to operate as a reseller of intrastate interexchange
19 telecommunications services to the public on a statewide basis and to offer a full range
20 of "1+" interexchange telecommunications services on a resale basis. Specifically,
21 Acceris seeks authority to provide MTS, out-WATS, in-WATS, and calling card services
22 to both business and residential customers.

23 **Q. What carrier will Acceris utilize as its underlying carrier for services in South**
24 **Carolina?**

25 A. Acceris will offer service to its subscribers using facilities of the communications
26 networks of MCI, AT&T, Sprint, Global Crossing, other facilities-based IXC's, and the

1 local exchange telephone companies operating in the state of South Carolina.

2 **Q. Is Acceris currently authorized to provide intrastate telecommunications services**
3 **in any other states?**

4 A. Yes. Acceris is authorized to provide telecommunications services in the following
5 jurisdictions: Colorado, District of Columbia, Georgia, Idaho, Illinois, Indiana, Iowa,
6 Kansas, Kentucky, Maine, Massachusetts, Michigan, Missouri, Montana, New
7 Hampshire, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode
8 Island, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming. It is seeking such
9 approval in other states required prior to the purchase of assets of ACC.

10 **Q. Does Acceris intend to file a tariff with the Commission?**

11 A. Yes, Acceris will file a tariff similar to the proposed tariff filed along with Acceris'
12 application as Exhibit E in this docket. We believe that Acceris' tariff will comport with all
13 orders, rules, and regulations of the Commission.

14 **Q. Will Acceris comply with the Commission's orders regarding the resale of**
15 **interexchange carrier services?**

16 A. Yes. Acceris will at all times provide and market interexchange carrier services in
17 accordance with current Commission policies. In addition, Acceris at all times provides
18 interstate services in compliance with all FCC rules and regulations.

19 **Q. Has Acceris provided any intrastate telecommunications services within the State**
20 **of South Carolina?**

21 A. No it has not.

22 **Q. What rates will Acceris charge upon receipt of certification?**

23 A. Acceris will charge the tariffed rates approved by the Commission.

24 **Q. How will Acceris market services in South Carolina?**

25 A. Acceris does not plan to market its services directly to consumers or businesses South
26 Carolina other than through its web site or direct inquiries to obtain services. Acceris

1 has commenced marketing of a VoIP product through an agent network that works with
2 businesses or calls on residential customers to offer them the VoIP telephone services
3 with related VoIP equipment. Those agents may also sign up customers for traditional
4 phone service. Those agents will only be allowed to sign new customers for Acceris if
5 they have a written Representative Agreement with Acceris. The Representative
6 Agreement, among other things, requires the agent to only use Acceris sales and
7 marketing materials and order forms to sign up new customers. In addition, they are
8 required to provide training to their employees regarding the Acceris Policies and
9 Procedures Regarding Slamming Prevention as part of their adherence to the
10 Representative Agreement. Acceris will not engage in direct telemarketing to obtain any
11 customers in South Carolina.

12 **Q. What Regulatory Treatment is Acceris seeking in this Application?**

13 A. Acceris requests that all of its business service offerings be regulated pursuant to the
14 procedures described and set out in Docket No. 95-661-C and as modified by Order No.
15 2001-997-C in docket No. 2000-407-C. It is Acceris' intent by this request to have its
16 long distance business services, consumer card services, future private line services,
17 and operator assisted services regulated in the same manner as this Commission has
18 permitted for by AT&T Communications of the Southern States. Specifically, Acceris
19 requests:

- 20 (a) removal of maximum rate tariff requirements for its business services,
21 consumer card, operator service, and future private line, and customer
22 network-type offerings;
- 23 (b) that tariff filings for these uncapped offerings are presumed valid upon
24 filing. If the Commission institutes an investigation of a particular filing
25 within seven days, the tariff filing will be suspended until further order of the
26 Commission; and

1 (c) any relaxation in the reporting requirements that may be adopted for AT&T
2 shall apply to Acceris also.

3 We understand that the alternative regulation orders were modified by Order No. 2001-
4 997 so that rate caps for operator-assisted calls where a consumer uses a local
5 exchange carrier's calling card to complete calls from locations which have not selected
6 that local exchange carrier as their toll provider. The order imposed a maximum cap of
7 \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the
8 flat per-minute rate associated with these calls.

9
10 **III. MANAGERIAL, TECHNICAL, AND FINANCIAL QUALIFICATIONS**

11 **Q. Does Acceris have sufficient managerial, technical, and financial resources and**
12 **ability to provide the telecommunications services proposed in its Application?**

13 A. Yes. Acceris has sufficient technical, financial, and managerial resources and the ability
14 to provide the telecommunications services for which authority has been sought herein.
15 Acceris' personnel represent a broad spectrum of business and technical disciplines,
16 possessing many years of individual and aggregate telecommunications experience. My
17 qualifications and experience are set forth on page 1 of this testimony. The Chief
18 Executive Officer of NCE, Elam Baer, and the CFO of NCE, Laura Carlson have
19 experience in operating other local and long distance resale companies by the operation
20 and growth of NewTel Holdings LLC and another resale local and long distance
21 company in Germany. Mr. Wilmes, Vice President for Portfolio acquisition of NCE was
22 the President of New Access Communications LLC prior to joining NCE.

23 **Q. How does Acceris handle customer service requests?**

24 A. Acceris operates a customer service department that can be reached conveniently by a
25 toll free number, (800) 569-8700, from 6 am to 7 pm PST Monday to Friday and
26 Saturday from 8 am to 4:30 p.m. PST. Other languages are available generally 8 am to 3

1 pm Monday to Friday only (including Portuguese, Russian and Mandarin Chinese and
2 Hindi) and through web site access to customer service at www.acceris.com on a 24
3 hours a day, 7 days a week basis in which the customer may contact customer service
4 by e-mail.

5 **Q. Please describe the financial condition of Acceris.**

6 A. In support of Acceris' financial ability to provide the services sought herein, Acceris filed
7 a balance sheet and income statement of its parent, North Central Equity LLC with the
8 Commission as Exhibit D to the Application in this proceeding. At the time of the hearing,
9 if necessary, I will provide further testimony to support Acceris' financial ability to provide
10 the services set forth in its Application. The parent company has invested over \$ 10
11 million dollars in debt along with certain accredited investors and a venture capital firm
12 for the purchase of the Acceris Communications Corp assets. Attached as Exhibit 1 is a
13 letter of guarantee from the Chief Executive Officer of North Central Equity LLC.

14 **Q. How will residents of South Carolina benefit from Acceris' services and presence**
15 **in South Carolina?**

16 A. Approval of Acceris' Application will serve the public interest by creating greater
17 competition in the interexchange marketplace and by providing VoIP service to South
18 Carolina consumers and businesses. Approval will also provide consumers with a
19 greater choice of billing options and long distance services for intrastate calls, promoting
20 more efficient use of the underlying networks. Acceris' participation in South Carolina's
21 intrastate telecommunications market will also expand the tax base and revenue sources
22 for the State.

23 **Q. Why is the company seeking an exemption from maintaining records in**
24 **South Carolina?**

25 A. Acceris requests a waiver of the requirements of 26 S.C. Reg. 103-610 that a carrier
26 keep all records required by the Commission's rules and regulations within the State of

1 South Carolina. Since the company's corporate offices are in Minnesota maintaining its
2 books and records in South Carolina would be unduly burdensome. Acceris will have a
3 registered agent in South Carolina and will bear any costs associated with the
4 Commission's inspection of its books and records.

5 Acceris would also like to amend its application to seek an exemption for any policies
6 that might require a carrier to maintain its financial records in conformance with the
7 Uniform System of Accounts. As a competitive carrier, Acceris maintains its books in
8 accordance with Generally Accepted Accounting Principles; and therefore, does not
9 possess the detailed cost data required by USOA.

10
11 **IV. ACQUISITION OF ASSETS OF ACCERIS COMMUNICATIONS CORP.**

12 **Q. Please briefly describe the Applicant's corporate structure.**

13 A. Acceris is a limited liability company organized in the State of Minnesota.

14 **Q. Please describe the Applicant's relationship with North Central Equity LLC.**

15 A. Applicant is a wholly owned subsidiary of North Central Equity LLC.

16 **Q. Can you briefly outline the asset acquisition for which the Applicants seek**
17 **Commission approval?**

18 A. Pursuant to an Asset Purchase Agreement executed May 19, 2005, Acceris
19 Communications Corp. ("ACC") has agreed to sell to Acceris, and Acceris has agreed to
20 purchase all telecommunications assets and operations of ACC, including but not limited
21 to: (1) all PUC/PSC/FCC licenses, CPCNs and tariffs authorizing ACC to provide
22 telecommunications services in all relevant states to the extent assignable or
23 transferable; and (2) the customer base; and (3) all other assets specified in the Asset
24 Purchase Agreement.

25 **Q. What will the result of these transactions be?**

1 A. Acceris will obtain the customer base and all telecommunications assets and operations
2 of ACC in the State of South Carolina and all other states in which ACC operates.

3 **Q. Please describe Acceris Management and Acquisition LLC.**

4 A. Acceris is a limited liability company organized under the laws of the State of Minnesota
5 and is a wholly owned subsidiary of NCE. Acceris is in the process of obtaining authority
6 to provide telecommunications services throughout the United States and has obtained
7 foreign qualification to do business in all states. Acceris is currently authorized to
8 provide interexchange and/or local exchange telecommunications services in Colorado,
9 District of Columbia, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine,
10 Massachusetts, Michigan, Missouri, Montana, New Hampshire, New Jersey, New
11 Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Virginia,
12 Washington, Wisconsin, and Wyoming and is seeking approval in all other states
13 necessary prior to closing upon the Asset Purchase Agreement.

14 **Q. Please describe Acceris Communications Corp. ("ACC")**

15 A. ACC is a corporation organized under the laws of the State of Delaware. ACC is
16 authorized under Section 214 of the Communications Act of 1934, as amended, to
17 provide, and is currently providing domestic interstate and international
18 telecommunications service throughout the United States. ACC has authority to provide,
19 and is currently providing intrastate, interexchange telecommunications services in the
20 contiguous 48 states, Hawaii and the District of Columbia. ACC is also authorized to
21 provide competitive local exchange services in Alabama, Arkansas, Colorado,
22 Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana,
23 Maryland, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Jersey, New
24 Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon,
25 Pennsylvania, Rhode Island, South Carolina, South Dakota, Washington and West

1 Virginia. ACC is currently providing local exchange service in Florida, Massachusetts,
2 New Jersey, New York, and Pennsylvania.

3 **Q. Please describe the relationship between ACC, Acceris Communications Inc. and**
4 **Counsel Corporation.**

5 A. ACC is a wholly owned subsidiary of Acceris Communications Inc., and Counsel
6 Corporation is the majority stockholder of Acceris Communications Inc. Counsel
7 Corporation is a company organized under Canadian law in the province of Ontario,
8 located in Toronto, Canada.

9 **Q. What impact will this transaction have on South Carolina customers?**

10 A. Customers will continue to receive competitively priced, quality, affordable
11 telecommunications services that they presently receive from ACC. Acceris will file a
12 tariff to establish rates terms, and conditions identical to those in ACC's tariffs, thus
13 providing a seamless transition for existing customers of ACC. The transaction will be
14 virtually transparent to ACC customers in terms of the services that they receive.

15 **Q. What notice will Acceris provide to South Carolina customers?**

16 A. Acceris has provided notice to ACC customers in accordance with all applicable state
17 and federal rules and regulations, and assure customers of the company's commitment
18 to continue the provision of high quality, affordable services pursuant to the company's
19 filed tariff.

20 **Q. What do the Applicants propose to do with any tariffs on file with the**
21 **Commission?**

22 A. ACC will cancel any tariffs on file with the Commission.

23 **Q. How is approval of these transactions in the public interest?**

24 A. The transaction contemplated by the Asset Purchase Agreement will service the public
25 interest by enabling Acceris to achieve increased economies of scale. The transaction
26 will allow Acceris to become a successful competitor in the telecommunications

1 marketplace. More effective competition will lead to lower prices and the availability of
2 more products and service to the public. The acquisition of the ACC customer base by
3 Acceris will enable subscribers to continue to receive quality telecommunications service
4 at affordable rates without interruption.

5 **Q. Does this conclude your testimony?**

6 A. Yes. I would like to thank the Commission for this opportunity to provide information
7 relevant to Acceris' Application and am ready to provide any additional information or
8 answer any additional questions that the Commission may need in making its decision.

NORTH CENTRAL EQUITY LLC
60 SOUTH SIXTH STREET, SUITE 2535
MINNEAPOLIS, MN 55402
612-465-0260
(Fax) 612-455-1022

July 28, 2005

Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, SC 29210

RE: Acceris Management and Acquisition
Application for Interexchange Authority and to Purchase Assets
Docket No. 2005-189-C

Dear Mr. Terreni:

The undersigned, hereby affirms on behalf of Acceris Management and Acquisition LLC, a Minnesota limited liability company, ("Acceris Management") that it is the parent company of Acceris Management and that it has financially supported the start up operations of Acceris Management and that it has provided certain intercompany loans to Acceris Management to provide funding for Acceris Management (along with debt funding of Acceris Management from certain accredited investors in Acceris Management) sufficient in amount to fund the operations of Acceris Management.

Very truly yours,

North Central Equity LLC



Elam Baer
Chief Executive Officer